

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

WILLIAM NAGY III,

Plaintiff-Appellee,

v

NORTHERN LAKES COMMUNITY MENTAL  
HEALTH AUTHORITY,

Defendant-Appellant.

---

UNPUBLISHED

August 10, 2017

No. 333254

Grand Traverse Circuit Court

LC No. 15-031324-AA

Before: CAVANAGH, P.J., and METER and M. J. KELLY, JJ.

PER CURIAM.

Defendant, Northern Lakes Community Mental Health Authority (Northern Lakes), appeals by leave granted the circuit court's order reversing the order of the Department of Health and Human Services (DHHS) and reinstating certain Medicaid services for plaintiff William Nagy III. Because the circuit court applied the wrong standard of review, we reverse and remand.

**I. BASIC FACTS**

Nagy, an adult male, is severely mentally disabled and requires 24-hour care. He is at constant risk of elopement and choking on objects, and it is undisputed that he requires almost total assistance with all activities of daily living. Nagy lives at his parents' house in a downstairs apartment that has been specifically modified for his needs. For approximately 20 years he had received 23 hours of services per day. DHHS provided about five hours of care through its Home Help Services (HHS) program. About 18 hours of the provided services were provided by Northern Lakes. Specifically, Northern Lakes provided nine hours of Community Living Supports (CLS) and nine hours of Respite Care Services (RCS) under the Habilitation Supports Waiver (HSW) program of Michigan's Medicaid plan.<sup>1</sup>

---

<sup>1</sup> The CLS and RCS services are defined in Michigan's Medicaid Provider Manual.

In 2015, Northern Lakes conducted its annual review of Nagy's Individualized Plan of Services (IPOS) and, even though neither Nagy's condition nor his situation had changed, Northern Lakes reduced his CLS services to about 3 hours per day and RCS services to about 3 hours per day. As a result, Nagy was provided with services for approximately 11 hours per day, as opposed to the 23 hours that he had previously received.

Nagy, through his legal guardians, appealed the decision to the Administrative Hearing System. After an evidentiary hearing, an Administrative Law Judge (ALJ) issued a decision affirming Northern Lakes's reduction of the CLS and RCS benefits, primarily finding that substantial evidence supported the decision to reduce Nagy's benefits. The ALJ stated:

The CLS provided by [Northern Lakes] should be complementing [Nagy's] HHS while also facilitating [Nagy's] independence, productivity, inclusion, and participation. Furthermore, as also indicated in the above policy, RCS hours are intended to be used on "a short-term, intermittent basis to relieve the beneficiary's family or other primary caregiver(s) from daily stress and care demands during times when they are providing unpaid care."

Here, following the most recent IPOS, [Northern Lakes] determined that [Nagy's] CLS goals could be met with 93 CLS hours per month and 96 RCS hours per month, given that [Nagy] also receives 164 HHS hours per month, for a total of 353 care hours per month, or approximately 12 hours per day. [Northern Lakes's] witnesses indicated that the reduction in CLS and RCS hours was based on a clinical review of [Nagy's] case, including caregiver progress notes and assessments. The clinical staff also pointed out that [Nagy] has significant informal supports, which also need to be considered. *It is also apparent from the evidence that previously [Nagy] was using CLS and RCS hours for monitoring and supervision, which would not be a proper use for CLS or RCS hours. CLS should be used to facilitate an individual's independence, productivity, and promote inclusion and participation. In other words, CLS involves active participation with a beneficiary, not monitoring or supervision. Furthermore, RCS should be used on "a short-term, intermittent basis to relieve the beneficiary's family or other primary caregiver(s) from daily stress and care demands during times when they are providing unpaid care." Here, [Nagy] was receiving numerous RCS hours on a daily basis, which cannot be considered short-term, or intermittent.* [Emphasis added.]

Nagy appealed the ALJ's decision and order to the circuit court, which reversed. The circuit court articulated its reasoning at length on the record, first noting that the parties did not dispute that Nagy required 24-hour care and that Michigan's Medicaid Provider Manual (the Manual) provides reasons why services can be reduced. The Court then stated:

However, [the Manual] also says that they're supposed to provide care for him, that is appropriate to his circumstances and situation. And the—among other things, the referee found the appellant requires trained staff to assist with personal care tasks and adult daily living tasks.

\* \* \*

*So the question is, what is the alternative? Since, for another 12 hours a day things have to be done to protect and take care of the appellant. . . .*

In any event, the—the operations manager who made this decision agreed that appellant needs monitoring, but that she was looking to natural support to provide some care if they were able. . . . So the question is, is there any evidence that there are natural supports out there that would be available?

The only two natural supports, as to which there was any evidence presented, were the mother and father. Mother is 60, has her own—has a job as a massage therapist and works out of the home. . . . The father is 65. Has a job. . . .

So if you ask them to provide 12 hours a day, 7 days a week, that's the only natural support that was discussed in the decision, that's not realistic, even if they had no job at all. They're older and they have reasons why it was—it was difficult for them to do that. The fact that he only sleeps a few hours a night, was part of it.

\* \* \*

So what we have here is [Northern Lakes]—let's see. [Northern Lakes] saying that there are other natural supports which can provide the additional care that everyone acknowledges that the appellant needs. Yet I didn't see substantial evidence on the record that would support the conclusion that the mother and father are sufficient to provide the 12 hours a day, 7 days a week of alternate care that is required.

*There is no—not substantial evidence on the record to support that conclusion. There hasn't been any substantial evidence or any evidence, even insubstantial, of other services and programs that could be provided, the needed supervision.*

\* \* \*

*It seems to me that you can decrease these services only if, and only if, there is an alternative. And there was no evidence presented on the record of such alternative. [Emphasis added.]*

Thereafter, the circuit court entered a final order reversing the ALJ's decision and reinstating Nagy's prior level of services.

## II. REVIEW OF THE ADMINISTRATIVE DECISION

### A. STANDARD OF REVIEW

A circuit court is to review an administrative decision to determine if it was authorized by law and whether the decision was supported by competent, material and substantial evidence on the whole record. Const 1963, art 6, § 28. An agency decision is not authorized by law if it violates constitutional or statutory provisions, lies beyond the agency's jurisdiction, follows from unlawful procedures resulting in material prejudice, or is arbitrary and capricious. *Northwestern Nat'l Cas Co v Comm'r of Ins*, 231 Mich App 483, 488; 586 NW2d 563 (1998). A decision is supported by substantial evidence if a "reasonable mind would accept [that evidence] as adequate to support a decision[.]" *VanZandt v State Employees Retirement Sys*, 266 Mich App 579, 584; 701 NW2d 214 (2005) (citation and quotation marks omitted). Substantial evidence is "more than a scintilla of evidence, although it may be substantially less than a preponderance of the evidence." *Leahy v Orion Twp*, 269 Mich App 527, 529-530; 711 NW2d 438 (2006) (citation and quotation marks omitted). Further, "[i]f there is sufficient evidence, the circuit court may not substitute its judgment for that of the agency, even if the court might have reached a different result." *VanZandt*, 266 Mich App at 584.

Our review of the circuit court's decision on appeal from an agency decision is more limited. "[W]hen reviewing a lower court's review of agency action this Court must determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test to the agency's factual findings." *Nat'l Wildlife Federation v Dep't of Environmental Quality*, 306 Mich App 369, 373; 856 NW2d 394 (2014) (citation and quotation marks omitted; alterations in original). "This latter standard is indistinguishable from the clearly erroneous standard . . . . [A] finding is clearly erroneous when, on review of the whole record, this Court is left with the definite and firm conviction that a mistake has been made." *Id.* (citation and quotation marks omitted; alterations in original). Stated differently, we review the circuit court's legal conclusions de novo and its findings of fact for clear error. *Braska v Challenge Mfg Co*, 307 Mich App 340, 352; 861 NW2d 289 (2014).

### B. ANALYSIS

On appeal, Northern Lakes argues that the circuit court failed to apply the appropriate standard of review in considering whether the ALJ erred in affirming the reduction of CLS and RCS. Northern Lakes explains that a review of the circuit court's decision shows that the court was focused on providing 24-hour supervision to Nagy, but that the issue of Nagy's "global care" was never before the ALJ. We agree.

After Northern Lakes reduced Nagy's CLS and RCS benefits in Nagy's 2015 Individualized Plan of Service, Nagy appealed that decision to the DHHS's Administrative Hearing system. Nagy specifically claimed that continuation of the CLS and RCS at the prior level continued to be medically necessary. Thus, the issue before the ALJ was whether Northern Lakes had unlawfully reduced Nagy's CLS and RCS benefits. The ALJ affirmed Northern Lakes's decision, concluding that CLS and RCS did not include "monitoring and supervision," that RCS did not include continuous regular care, and finding that substantial evidence supported

the reduction of these services given that Nagy was using CLS and RCS for monitoring and supervision on a regular basis.

On appeal, the circuit court recognized that the Manual permits Northern Lakes to reduce services. However, instead of addressing whether the ALJ properly interpreted the Manual and whether substantial evidence supported the ALJ's decision, the court considered whether any substantial evidence on the record supported that alternative care was available to Nagy. The court then concluded that no such substantial evidence existed to support that alternative care was available and reversed the ALJ's decision. In other words, the court's analysis was based on the premise that Nagy is entitled to Medicaid benefits for 24-hour supervision, and that Northern Lakes has the duty to establish an alternative to compensate for reduction in CLS and RCS. Rather than consider whether competent, material and substantial evidence existed to support the ALJ's decision regarding whether certain services are authorized by the Manual and consistent with Nagy's IPOS, the court looked only for evidence of alternatives to the services. The circuit court gave little or no attention to the criteria for CLS and RCS in the Manual, and whether Nagy's prior utilization of these services comported with the Manual's requirements and the stated goals in his IPOS.

Our role on appeal from an appeal of an agency decision is to "determine whether the lower court applied correct legal principles and whether it misapprehended or grossly misapplied the substantial evidence test *to the agency's factual findings*." *Nat'l Wildlife Federation*, 306 Mich App at 373 (citation and quotation marks omitted; emphasis added). Here, because the circuit court did not review the ALJ's decision, we cannot meaningfully determine whether the circuit court erred in its interpretation of the Manual or misapplied the substantial evidence test to the ALJ's findings. Accordingly, we remand this matter to the circuit court for it to determine if the ALJ's decision affirming the reduction of CLS and RCS benefits was authorized by law and whether the decision was supported by competent, material and substantial evidence on the whole record.

Reversed and remanded for further proceedings. We do not retain jurisdiction.

/s/ Mark J. Cavanagh  
/s/ Patrick M. Meter  
/s/ Michael J. Kelly